

ALC

SA

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JAN 28 2010

SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM ADMIN. LAW COURT

18339

CASE NO. 09-ALJ-04-00122-IJ

Stacy W. Howard.....Appellant,

vs.

South Carolina Dept. of Corrections.....Respondent.

RECORD ON APPEAL

January 22, 2010

Stacy W. Howard  
Kershaw Corr. Inst.  
4848 Goldmine Highway  
Kershaw, SC 29067

Christopher D. Florian  
S.C. Dept. of Corrections  
Post Office Box 21787  
Columbia, SC 29221-1787

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1/17  
1/2

1

1/2  
Wed

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

062408

|  |   |
|--|---|
| Institution/Center <u>Kershaw Correctional Institution</u> |   |
| Date of Report <u>6/24/08</u>                              | Time of Report <u>Approx. 5:45 pm</u>   |
| Reporting Official <u>Mr. Vernon A. Tucker 032430</u>      | Date of Incident <u>6/24/08</u>         |
| Location of Incident <u>Law Library</u>                    | Time of Incident <u>Approx. 5:15 pm</u> |
| Inmate(s)/Resident   | Employee(s) Involved                    |
| SCDC# Age Race Sex   |   |
| 1 <u>Howard, Stacy 191458 W/M</u>                          | 1 <u>Mr. Vernon A. Tucker MA3</u>       |
| 2 <u>Thrift, Michael 316275 W/M</u>                        | 2 <u>Mr. David Dunlap</u>               |
| 3  | 3 <u>Ms. Patricia Cooks</u>             |
| 4 <u>MA3</u>   | 4                                       |
| 5  | 5                                       |

#30  
MA3  
SA

On the above date and approximate time I Mr. Vernon A. Tucker ~~was~~ SCDC employee # 032430 was entering the education building for my night school classes. Officer Patricia Cooks the Librarian asked me to come there. Ms Cooks had in her possession what appeared to be some legal work belonging to inmate Thrift, Michael SCDC# 316275 who was also present. Ms. Cooks explained to me that Mr. Thrift had some legal work done by inmate Stacy Howard SCDC# 191458. Mr. Thrift explained to me that he could not read or write so he asked Mr. Howard to help him. I asked Mr. Thrift, Mr. Howard (who was in the law library at the time) and Ms Cooks to enter my office. Warden Dunlap, David was already there and was asked to stay as a witness being that this

|             |  |
|-------------|--|
| Signature   | RECEIVED<br>MAJOR'S OFFICE K/CI  |
| Evidence    | WARDEN _____ A/W OPS _____ A/W ADMIN _____<br>ADM CAPT _____ CHIEF CAPT _____ INV _____<br>CLASS _____ EDU C _____ GRIEVANCE _____<br>EIS _____ OR RE _____ SMU _____<br>OTHER _____ |
| Witness(es) |  |

Supervisor's Comments CONCUR WITH CHARGE 845  
REFER TO MAJOR

(71) Signature P. [Signature] Title LT. Date/Time 8:04 PM 6-24-08

Major/Responsible Authority I'm Thrift accepted sanctions, \* I'm Howard refused sanction, forward to DFO I'm Howard ref 191458 refused to sign 19-1000

JUN 25 2008

STC Related - Refer to STC Committee  
INVESTIGATE NO GIVE ME FACTS  
( ) Yes ( ) No ( ) Unknown  
CONFER WITH NO UNKNOWN  
PREPARE FOR WARDEN  
PLEASE REPLY/SEND ME COPY  
This incident is DRUG related  
( ) Yes ( ) No ( ) Unknown

12.9

Action Taken  
( ) Informal Resolution  
( ) Administrative Resolution  
6/27

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INCIDENT REPORT

062408

|  |   |
|--|---|
| Institution/Center <u>Kershaw Correctional</u>     |   |
| Date of Report <u>6/24/08</u>                      | Time of Report <u>Approx. 5:45 pm</u>   |
| Reporting Official <u>Mr. Vernon Tucker 032430</u> | Date of Incident <u>6-24-08</u>         |
| Location of Incident <u>Law Library</u>            | Time of Incident <u>Approx. 5:15 pm</u> |
| Inmate(s)/Resident                                 | Employee(s) Involved                    |
| 1  | 1                                       |
| 2  | 2                                       |
| 3  | 3                                       |
| 4  | 4                                       |
| 5  | 5                                       |

On the above date and approximate time was a violation of SCDC Policy GA 1.03 inmate access to the Courts. I asked Mr Howard if he had ~~not~~ done the legal work for Mr Thrift. He said yes. I asked him that being that he was a former law library clerk if he knew the Policy he said yes. Mr Howard then went on to quote Section 4 of SCDC Policy GA-01.03 "Inmates Access to the Courts". I explained to Mr Howard and Mr Thrift that Mr Howard was not a law library clerk nor was he an attorney and this was a violation of Policy. Inmates Thrift, Michael SCDC# 316275 and inmate Howard, Stacy SCDC# 191458 are both being charged with 845 unauthorized services/piddling.

Signature V. T.

MAJORS OFFICE K.C.C.  
 WARDEN \_\_\_\_\_  
 ADM CAPT. \_\_\_\_\_  
 CLERK \_\_\_\_\_  
 F/S \_\_\_\_\_  
 OTHER \_\_\_\_\_

Evidence Legal work (copies)

Witness(es) Ms. Patricia Cooks, Warden David Dunlap

JUN 25 2008

Supervisor's Comments CONCUR WITH CHARGE 845  
RERER TO MAJOR

FOR INFO \_\_\_\_\_ PLEASE HANDLE \_\_\_\_\_  
 INVESTIGATE \_\_\_\_\_ GIVE ME FACTS \_\_\_\_\_  
 CONFER WITH \_\_\_\_\_  
 STG Related Ref. to STG Committee  
 PREPARED FOR WARDEN  
 ( ) YES ( ) NO ( ) UNKNOWN

Signature [Signature] Title LT Date/Time 8:04 PM 6-24-08

This Incident is DRUG related  
 ( ) Yes ( ) No ( ) Unknown

Major / Responsible Authority

Action Taken  
 ( ) Informal Resolution  
 ( ) Administrative Resolution

# MEMORANDUM

3

24

To **Warden Cecilia Reynolds**  
Through **Associate Warden Jeanne McKay**  
From **Mr. Vernon A Tucker, Educational Coordinator**

---

Subject **Suspension of Library Services**  
Date **June 24, 2008**

Warden Reynolds I am requesting that the following inmates be suspended from the library until their disciplinarys are resolved as outlined in P S 08 04 inmate Stacy Howard SCDC # 191458 and inmate Michael Thrift SCDC # 316275 Both inmates have been charged with SCDC disciplinary 845 Unauthorized Services/ Piddling as defined in SCDC disciplinary policy OP - 22 14

I have attached a copy of the incident report and the library services policy PS - 08 04 section 5 Suspension Of Library Privileges/ Disciplinary Actions for you to review and make your final decision based on policy

Suspension: Y/N

Suspension: Y/N

S/   
Warden Cecilia Reynolds

S/   
Associate Warden Jeanie McKay

S/   
Vernon A. Tucker, Educational Coordinator

29  
MA

4

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE DISCIPLINARY SYSTEM  
INFORMAL RESOLUTION/ADMINISTRATIVE RESOLUTION

|   |                                     |
|---|-------------------------------------|
| Inmate Name<br><u>Stacy Howard</u>  | Inmate SCDC Number<br><u>191458</u> |
| Number/Type of Violation (SCDC Form 19 29 Incident Report attached)<br><u>845 Unauthorized Services</u> |                                     |
| Date of Violation<br><u>6/24/08</u>   | Institution<br><u>Kershaw CI</u>    |

I find the inmate committed the charge(s) specified offer the inmate the option to resolve the violation (place check in appropriate box)

**INFORMALLY**     **ADMINISTRATIVELY**

and impose the following sanction(s)

| Sanction   | Number of hours/days of sanction or amount of restitution |
|--|---|
| Counseling (Check box if imposing this sanction)   | <input checked="" type="checkbox"/>                       |
| Instructions or directives (Check box if imposing this sanction)   | <input checked="" type="checkbox"/>                       |
| Verbal reprimand (Check box if imposing this sanction)   | <input type="checkbox"/>                                  |
| Extra duty or chores up to 40 hours  | <u>6</u> Hours  |
| Restriction of recreation time (general population only) up to 30 days   | _____ Days  |
| Restriction of <del>canteen</del> visitation or other privileges up to 90 days   | <u>7</u> Days   |
| Restriction of television viewing and/or radio up to 90 days for Informal Resolution or up to 120 days for Administrative Resolution | _____ Days  |
| Payment of restitution   | \$ _____  |
| Cell restriction up to 30 days for Informal Resolution or up to 60 days for Administrative Resolution                                | <u>3</u> Days   |
| <b>ADMINISTRATIVE RESOLUTION ONLY</b> Disciplinary detention up to seven (7) days time in an institutional Special Management Unit   | _____ Days  |
| <b>ADMINISTRATIVE RESOLUTION ONLY</b> Failure to earn good time  | _____ Days  |

The above sanctions are suspended for (UP TO 90 DAYS) \_\_\_\_\_ days If the inmate commits no additional disciplinary infractions during that time period the sanctions will be lifted and the inmate will not have to serve them If the inmate commits an additional disciplinary infraction s/he will have to serve the above sanctions and may be subject to additional disciplinary action

Darren Seward    Kershaw CI    [Signature]    6/25/08  
Major/Responsible Authority    Institution    Signature    Date  
(Print Name)

**INMATE S ACCEPTANCE OF INFORMAL OR ADMINISTRATIVE RESOLUTION**

This is to certify that I, Stacy Howard understand that as a result of the above incident I have been offered the option to resolve the violation (place check in appropriate box)

(74)  **INFORMALLY**     **ADMINISTRATIVELY**

Yes, I accept the sanctions listed above I understand that I have the privilege of requesting this case be referred to a disciplinary hearing and I waive that privilege I further agree that by accepting this informal or administrative resolution I waive all appeals including those pursuant to Al Shabazz v. State

No, I do not want to accept the sanctions listed above and request that this case be referred to a disciplinary hearing

6/25/08  
Date

(202)

[Signature]  
Inmate Signature

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
DISCIPLINARY REPORT AND HEARING RECORD

Case# 00030 Inmate Name Howard, Stacy SCDC# 191458

Living Area MA3 Job NA Custody NA

Offense Date 6 / 24 / 08 Offense Time 5 15 ~~AM~~/PM Institution Kershaw

Offense Description

845 Unauthorized Services/Piddling (Handicrafts) No inmate shall attempt to provide professional services/handicrafts for any person for any reason whether it is for profit or not

Charging Officer/Employee Vernon Tucker Title Education

INMATE NOTIFICATION YOU WILL APPEAR BEFORE A HEARING OFFICER 24 HOURS OR MORE AFTER YOUR RECEIPT OF THIS NOTICE YOU HAVE THE RIGHT TO SUBMIT A WRITTEN STATEMENT AND MAKE A VERBAL STATEMENT

INMATE WAIVERS

- I GIVE UP MY RIGHT TO 24-HOUR NOTICE AND AUTHORIZE THE HEARING OFFICER TO PROCEED WITH THE HEARING
- DO NOT WANT TO BE PRESENT AT MY HEARING
- I DO WANT MY ACCUSER PRESENT AT THE HEARING
- I DO NOT WANT MY ACCUSER PRESENT AT THE HEARING
- I WAIVE MY RIGHT TO A HEARING SMU/SEGREGATION ONLY
- I WANT A COUNSEL SUBSTITUTE
- I DO NOT WANT A COUNSEL SUBSTITUTE

Date & Time Notified 6/27/08 11:25 AM/PM By (Print) Sgt Taylor  
Inmate Signature X STACY HOWARD SCDC# 191458 Date 6/28/08

HEARING INFORMATION

|              |               |              |                |      |            |      |          |       |            |     |            |
|--------------|---------------|--------------|----------------|------|------------|------|----------|-------|------------|-----|------------|
| Hearing Date | <u>7-9-08</u> | Hearing Time | <u>1255 am</u> | Tape | <u>108</u> | Side | <u>B</u> | Start | <u>335</u> | End | <u>603</u> |
|--------------|---------------|--------------|----------------|------|------------|------|----------|-------|------------|-----|------------|

EXPLAIN BELOW BY NUMBER (1) IF COUNSEL SUBSTITUTE WAS NOT PRESENT DURING PART OF THE HEARING (2) IF ACCUSED WAS EXCLUDED FROM ANY PART OF THE EVIDENCE STAGE IF ANY (3) WITNESSES (4) DOCUMENTATION OR (5) EVIDENCE WAS EXCLUDED FROM THE HEARING OR (6) IF INMATE WAS DENIED CONFRONTATION QUESTIONING AND/OR CROSS EXAMINATION OF A WITNESS AT THE HEARING

12:9  
Tucker out to lunch

|                           |            |  |  |  |  |
|---------------------------|------------|--|--|--|--|
| OFFENSE CODES             | <u>845</u> |  |  |  |  |
| INMATE PLEA (G, NG, None) | <u>NG</u>  |  |  |  |  |
| FINDINGS (G, NG, DS)      | <u>G</u>   |  |  |  |  |

IF GUILTY EVIDENCE PRESENTED CONSIDERED AND REASONS FOR DETERMINATION OF GUILT (A) ADMISSION OF GUILT (B) OFFICER'S REPORT (C) WITNESS TESTIMONY (D) OTHER. EXPLAIN IN DETAIL Written verbal testimony of Tucker

HEARING LENGTH 14 (MINUTES) 11/7/2017 360

SANCTIONS

- Loss of Privileges (Days) \_\_\_\_\_ Reprimand  Loss of Good Time (days) \_\_\_\_\_
- \* Property (Days) \_\_\_\_\_ Extra Duty \_\_\_\_\_ Restitution \$ \_\_\_\_\_ \*\*
- \* Canteen (Days) \_\_\_\_\_ Visit Suspension Thru 1/1
- \* Other (Days) \_\_\_\_\_ Cell Restriction (Days) \_\_\_\_\_
- \* Disciplinary Detention (Days) \_\_\_\_\_

SPECIFIC FACTUAL REASON(S) FOR PARTICULAR PUNISHMENT IMPOSED 1st offense of 845

70

CREDIT FOR PHD TIME SERVED? YES/NO IF YES DAYS \_\_\_\_\_

DATE INMATE PLACED IN PHD 1/1/1

INMATE SIGNATURE FOR RECEIPT OF FINAL REPORT [Signature] DATE 7-9-08

HEARING OFFICER (PRINT NAME) A. Sellers

APPROVED/REVERSE/MODIFY [Signature] Warden REASON \_\_\_\_\_

CONTACT YOUR CLASSIFICATION CASEWORKER OR COUNSEL SUBSTITUTE IF YOU DO NOT UNDERSTAND THIS FORM

Johnson v. Avery, 393 US 483, 89 S.Ct 747 (1969)

9. Prisoners 13, state prison regulation barring inmates from "assisting" other prisoners in preparation of petitions for postconviction relief was invalid as in conflict with federal right of habeas corpus, despite state's claim that requirement was necessary to maintain prison discipline, where state did not provide available alternative to "assistance" provided by other inmates.

Daymen - in and out of prison - should be allowed to act as "next friend" to any person in the preparation of any paper or document or claim, so long as he does not hold himself out as practicing law or as being a member of the Bar.

It is also true that the illiterate or poorly educated and inexperienced indigent cannot adequately help himself and that unless he secures aid from some other source he is effectively denied the opportunity to present to the courts what may be valid claims for post-conviction relief.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

STEP 1  
JUL 23 2008

Office Use Only  
Grievance No KRC 02-08  
Code General \_\_\_\_\_  
Policy \_\_\_\_\_  
Disc Hear 845 #30  
Class \_\_\_\_\_  
Date Received 7/28/08  
IGC Initials NA

INMATE NAME STACY W. HOWARD  
SCDC NUMBER 191458  
INSTITUTION KERSHAW (JBV)  
HOUSING UNIT MAGNOLIA A-3 SB 271T  
WORK ASSIGNMENT RECREATION CLERK

MA53

STATE GRIEVANCE (include documentation and date of incident if SCDC Policy, indicate which policy)

~~THIS IS AN APPEAL FROM THE DHO'S FINDINGS AND DECISION FOR~~  
AN 845 CHARGE, WHICH WAS HEARD ON 7-9-08. THE CONVICTION  
WAS OBTAINED AGAINST THE GRIEVANT FOR HELPING AN "ILLITERATE"  
INMATE FILL OUT HIS PCR APPLICATION ON 6-24-08. THIS APPEAL  
IS PREMISED ON THE FOLLOWING:

- 1 WHETHER THE CONVICTION IS IN VIOLATION OF FEDERAL PRECEDENT,
- 2 WHETHER THE DECISION OF THE HEARING OFFICER WAS IN SUBSTANTIAL COMPLIANCE WITH POLICIES, PROCEDURE, AND FEDERAL LAW.

3. WHETHER, UNDER THE CIRCUMSTANCES, SHOULD 845 APPLY.

ACTION REQUESTED

VACATION OF THE CONVICTION AND SANCTION.

SPECIFY HOW AND WHEN INFORMAL RESOLUTION WAS ATTEMPTED BY GRIEVANT

THIS IS AN APPEAL FROM A DISCIPLINARY HEARING.

Stacy W. Howard 7/21/08  
Grievant Signature / Date

ACTION TAKEN BY IGC

Reviewed all pertinent information and disciplinary documentation  
See Warden's Response for decision

Warden 8/27/08  
IGC Signature / Date

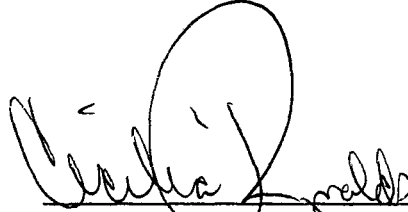
NA

**WARDEN'S DECISION AND REASON**

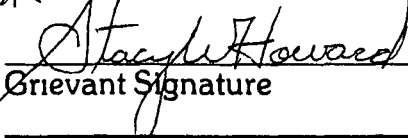
Inmate Howard,

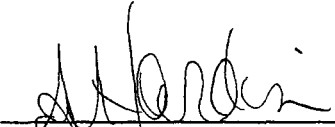
This is in response to KRCI-0892-08 You have appealed the results of your 7/9/08 Disciplinary Hearing where you were found guilty on the charge of 845 Unauthorized Services/Piddling The issues you stated do not warrant a reversal of the charge Pertinent documentation has been reviewed and an investigation of the hearing was conducted No technicalities, procedural errors, or misinterpretations of evidence was noted and the decision of the Disciplinary Hearing Officer was based on substantial evidence Based on this information, your appeal is without merit and therefore denied

If not satisfied with my response, see Step 5 below

  
Warden Signature      9-8-08  
Date

I accept the Warden's decision and consider the matter closed  
 I do not accept the Warden's decision and wish to appeal

  
Grievant Signature      9/19/08  
Date

  
IGC Signature      9/29/08  
Date

**INSTRUCTIONS FOR COMPLETING STEP 1 GRIEVANCE FORM**

- 1 An informal resolution shall be attempted prior to the filing of Step 1
- 2 Complete each section in its entirety, writing only in the space provided for inmate use
- 3 Only one (1) issue is to be addressed on each form
- 4 Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident, policy grievances at any time Do not write in the space provided for the Warden's response
- 5 If you are not satisfied with the Warden's decision, you may appeal to the appropriate responsible official within five (5) days of your receipt of the Warden's decision, via the Institutional Grievance Coordinator

ONE: THE CONVICTION IS IN VIOLATION OF INMATE TO INMATE ASSISTANCE TO ILLITERATE PRISONERS WHO ARE INCAPABLE OF ACCESSING THE COURTS, AND APPELLANT SHOULD NOT BE PUNISHED OR LOSE GOODTIME FOR OBSERVING FEDERAL PRECEDENTS. SEE APPELLANT'S AFFIDAVIT IN ACCORDANCE WITH OP-22.14, SECTION 7.3, AND STAMP DATED JUNE 30, 2008; ALSO SEE JOHNSON V AVERY, 89 S. CT 747 (1969), WOLF V. McDONNELL, 94 S. CT AT 2985-86, HADZIK V. JOHNSON, 694 F. SUPP. 259 (1988), KNOP V JOHNSON, 667 F. SUPP 467 (1987), ABBOTT V. MEESE, 824 F.2d 1166 (1987), ADAMS V. JAMES, 784 F.2d 1077 (1986), AND WILLIAMS V. LANE, 851 F.2d 867 (1988)

TWO: THE APPELLANT WAS NOT ALLOWED TO PRESENT WITNESSES OR DOCUMENTARY EVIDENCE, EVEN AFTER ADVANCE NOTICE SEE JUNE 30, 2008 LETTER TO MR ARMSTRONG. MOREOVER, THE DHO DID NOT INDICATE THE DENIAL OF WITNESSES ON SCDC FORM 19-69 SEE OP-22.14, SECTION 15.3, AND JUNE 30, 2008 LETTER TO MS. SELLERS

THREE: THE APPELLANT WAS NOT ALLOWED AN OPPORTUNITY TO QUESTION HIS ACCUSER. SEE OP-22.14, SECTION 15.5 AND 18.1.4, MOREOVER, THE DHO DID NOT INDICATE THE DENIAL ON SCDC FORM 19-69.

FOUR: THE APPELLANT WAS NOT ALLOWED AN OPPORTUNITY TO PRESENT DOCUMENTARY EVIDENCE SEE OP-22.14 SECTIONS 8.2.6 AND 18.1.3. MOREOVER, THE DHO DID NOT INDICATE THE EXCLUSION ON SCDC FORM 19-69.

FIVE: THE PROCEDURAL VIOLATION 2-4 ABOVE, IS A VIOLATION OF THE PROCEDURES DELINEATED IN WOLF V McDONNELL, 94 S. CT 2983 AND EDWARDS V BALZOK, 117 S. CT 1584 (1997).

SIX: THE INCIDENT REPORT WAS EXECUTED BY AN IMPROPER OFFICIAL, WHO WAS NOT A MAJOR/RESPONSIBLE AUTHORITY, WHICH IS INCONSISTENT WITH OP-22.14, SECTION 3.3,

SEVEN: APPELLANT REQUESTS TO HEAR THE TAPE AND ITS INCLUSION ON APPEAL. SEE OP-22.14 SECTION 23 - 23.4

10

Due 10/4/08

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS  
INMATE GRIEVANCE FORM

STEP 2 SEP 30 2008

Office Use Only  
Grievance No KRCE-0892-08  
Code General  
Policy \_\_\_\_\_  
Disc Hear 845 #30  
Class \_\_\_\_\_  
Date Received 10/1/08  
IGC Initials SLA

INMATE NAME STACY W JOWARD  
SCDC NUMBER 191458  
INSTITUTION WERSHAW  
HOUSING UNIT MA-53  
WORK ASSIGNMENT DOPM

REF VFD  
OCT 15 2008

INMATE GRIEVANCE

INMATE'S REASON FOR APPEAL (state specific dissatisfaction)

The conviction and sanction is in violation of federal precedents and SCDC policy. There is no prohibition from helping an illiterate inmate when there is no meaningful procedure available. The appellant was not allowed to present witnesses and documentary evidence, and the DHO did not indicate the denial on form 19-69. The appellant was not allowed to question his accuser, and the DHO did not indicate the denial on form 19-69. Therefore, the conviction and reprimand should be vacated.

Stacy W Howard 9/29/08  
Grievant Signature Date

RESPONSIBLE OFFICIAL'S DECISION AND REASON

The documentation provides that the evidence presented was sufficient to support the conviction of Unauthorized Services/Piddling (Handicrafts) (8 45), on July 9 2008 under SCDC Policy OP-22 14 Inmate Disciplinary System dated October 1 2007 and the sanction(s) imposed, which included the loss of -0- days accrued good time were appropriate for the rules violation(s). There was no reason found to warrant a reversal of the Disciplinary Hearing Officer's decision. A review of your appeal revealed that you received twenty-four (24) hour notice prior to the hearing you were afforded due process rights as required and the offense was classified and heard in a timely manner.

Therefore your grievance is denied

You may appeal this decision under the Administrative Procedures Act to the Administrative Law Court. In order to appeal you must fill out the attached Notice of Appeal Form and submit it as instructed on the form within 30 days of receipt.

De Pa 11/04/2008  
Signature Date

The decision rendered by the responsible official exhausts the appeal process of the Inmate Grievance Procedure. I hereby acknowledge receipt of the official's response and understand this is the Agency's final response to this matter.

Grievant Signature Date IGC Signature Date

As follows in article  
 Disciplinary Hearing Officer (ADO)  
 RE: [unclear] [unclear]  
 July 2, 2008 to [unclear]

June 30, 2008

**RECEIVED**

JUN 30 2008

KerCI  
 MAILROOM

Dear LHO,

I am scheduled to appear before you for an administrative hearing on July 2, 2008. Please send me with this letter a copy of the following:

- 1 June 30 2008 letter to the Administrator re active record substitute consisting of two (2) pages
- 2 June 30 2008 affidavit of my defense consisting of seven (7) pages, and
- 3 affidavit verifying advance notice

The affidavit of my defense is submitted in advance to the administrative hearing in accordance with KCIIC policy DP-2214 section 73

m.

There is a time to preserve the  
 record, in a loss of procedure for  
 the Administrative Law Panel, Rules  
 53-59 and 61. I have seen *Al-Abazgo*  
*v. State*, 527 A.E.2d 742 (2000) and  
*T. Tucker v. A.D.C.*, latest decision

Thank you for your time,  
 patience, and understanding.

Best Regards,  
 Anthony Howard  
 Arlington, VA, A.D.C., R. #3

cc: DHO  
 Counsel Substitute  
 Vernon Tucker

**RECEIVED**

JUN 30 2008

KerCI  
 MAILROOM

The Armstrong & active  
Council Substitute  
Kershaw Vocational Inst  
4848 Sidmore Highway  
Kershaw, SC 21067

June 30, 2008

**RECEIVED**

JUN 30 2008

KerCI  
MAILROOM

RE: Rule 845 Defense  
July 2, 2008 hearing

Dear Council Substitute,

I have a rule 845 charge lodged  
against me and a scheduled administrative  
hearing is set for July 2, 2008. Because  
of the complexity of the issue, it will  
be unlikely for me to be able to collect  
and present the evidence necessary for  
an adequate defense without your  
assistance.

I need your assistance in obtaining  
a copy of the June 24, 2008 inmate  
attendance law library log sheet and  
for taking statements from each inmate  
who observed what transpired in the  
law library on the twenty-fourth. As

m.

cc. DND  
General Admitt  
Denver Tuckor

But records  
Att records # 15158  
Att records, 1-1-11 Rm #3

Thank you for your time, patience, and understanding.

In case my phone, please  
renew with Th' Donnell, 418 U.A., which  
determined that I am entitled to due  
process, which requires an appointing  
to call witnesses and to present  
documentary evidence. Also see ACR  
policy DP-22.14 section x 1.2.

It is imperative for  
me to travel to meet with the  
state and correct inmate statements  
or make a copy of the June 24, 2008  
law library affidavits log sheet.

Vernon Tucker  
Kowloon Structural Int.  
4848 St Albans Highway  
Kensington, DC 270157

June 30, 2008

**RECEIVED**

JUN 30 2008

KerCI  
MAILROOM

Re: P-2-845 Appeal  
July 2, 2008 Hearing

Dear Mr. Tucker,  
I trust you will find my response  
to the motion you have filed  
against me.

Thank you for your time  
and understanding.

Best Wishes  
Atty. Howard  
Thompson, II, #3

cc: DND  
Counsel Substitute  
Vernon Tucker

RECEIVED

JUN 30 2008

KerCI  
MAILROOM

STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW

AFFIDAVIT

STACY W HOWARD, FIRST BEING DULY SWORN, DEPOSES  
AND SAYS:

I HAVE SUBMITTED THE FOLLOWING LETTERS AND  
AFFIDAVIT DATED JUNE 30, 2008 TO THE FOLLOWING PERSONS  
BY PLACING THREE (3) COPIES OF SAME IN THE GRAY REQUEST  
BOX LOCATED IN FRONT OF THE CAFETERIA, AS DATED BELOW.

- 1 MR ARMSTRONG OR ACTIVE COUNSEL SUBSTITUTE,
- 2 MS SELLERS OR ACTIVE DISCIPLINARY HEARING  
OFFICER (DHO),
- 3 MR VERNON TUCKER

SAID LETTERS AND AFFIDAVIT ARE HEREWITH ATTACHED

Stacy W Howard  
 STACY W HOWARD - AFFIANT  
 KERSHAW CORRECTIONAL INST.  
 4848 GOLDMINE HIGHWAY  
 KERSHAW, SC 29067

SWORN TO AND SUBSCRIBED BEFORE ME  
 THIS 30 DAY OF June, 2008  
Florence M Kline  
 NOTARY PUBLIC FOR SOUTH CAROLINA,  
 MY COMMISSION EXPIRES. 1/31/18

RECEIVED

JUN 30 2008

KerCI  
MAILROOM

STATE OF SOUTH CAROLINA  
COUNTY OF KERSHAW

AFFIDAVIT

I, STACY W HOWARD, FIRST BEING DULY SWORN,  
DEPOSE AND SAY

I AM CHARGED WITH AN OFFENSE TITLED 'UNAUTHORIZED  
SERVICES / SENDING HANDWRITTS' PURSUANT TO SCDC POLICY  
OF 2014 (CASE NUMBER 845) THE CHARGE AND ACCUSATION  
LIED AGAINST ME IN SCDC FORMS 19-29-A AND 19-49 IS  
FOR HELPING INMATE MICHAEL THRETT # 316275, WHO IS ILLITERATE,  
FILL OUT HIS PCR APPLICATION BY WRITING ITS THOUGHTS AND  
CONTENT IN WRITING THIS WAS DONE IN THE KERSHAW  
LAW LIBRARY, SPENTLY AMONG INMATES AND STAFF OFFICIALS

BEING THAT INMATE THRETT IS ILLITERATE, AND  
BECAUSE NOBODY ELSE WOULD PROVIDE HIM WITH ASSISTANCE, I  
APPROACHED HIS SITUATION BY READING THE PROPER LAW TO  
HIM TO FIRST ENLIGHTEN HIM, AND THEN TO DETERMINE  
IF THE THREE (3) GROUNDS IN HIS APPLICATION WHICH IS  
ILLEGALLY DEFERRED ELEMENTS, IS WHAT HE WANTED TO ARGUE,  
THE FINAL APPROACH ENDED IN WRITING OUT EXACTLY WHAT  
THE LAW REQUIRES AN APPLICANT TO PROVE (OBVIOUSLY, THE  
AFFIDAVIT IS LEFT TO PCR COUNSEL TO MAKE AN  
ADDENDUM OR AMENDMENT.

I DID NOT OFFER PROFESSIONAL SERVICE  
TO INMATE THRETT THERE IS A DISTINCTION BETWEEN

M.

1.

4  
33

"-SILENCE" AND "ASSISTANCE" I SIMPLY ASSISTED INMATE  
 WREFT, WHO HAS NEVER BEEN TO THE K.C.Z LAW LIBRARY,  
 BY READING HIM THE PROPER LAW IN 17 27-10 ET SEQUENTES,  
 VOLUME 7, CRIMINAL LAW, KIT 275 (1) ET SEQ AND  
 VOLUME 8A KIT 1400 ET SEQ. AFTER INMATE THRETT'S  
 ENTICEMENTMENT, HE DECLINED THAT HIS PLEA OF GUILTY  
 WAS NOT INTELLIGENTLY OR VOLUNTARILY MADE, THAT HIS  
 PLEA COUNSEL AND APPELLATE COUNSEL WERE BOTH INEFFECTIVE,  
 AND THAT HE WANTED TO FILE OUT HIS APPELLATION.

WHEN IT COMES TO THE INDENTIFIED ACCIDENT, THERE  
 SHOULD BE A CLOSE AND HONEST EXAMINATION CONCERNING  
 THE ADEQUACY OF THE K.C.Z LAW LIBRARY AND WHETHER  
 ILLITERATE PERSONS AND FOREIGNERS HAVE EFFECTIVE AND  
 MEANINGFUL ACCESS TO THE COURTS. THE ISSUE HERE IS  
 WHETHER THE SYSTEM HAS DESIGNED AN ADEQUATE,  
 EFFICIENT, AND MEANINGFUL PROCEDURE FOR ILLITERATE  
 PERSONS. THE ANSWER TO THIS IS THAT NO SUCH  
 PROCEDURE EXISTS IN THE SCDC OR KERSHAW.

IN BROWNIE V. SMITH, 17 S CT 1191 AND LWES  
V. LAYT, 116 S CT 2174, THE U.S SUPREME COURT  
 SUPPLIES HELD THAT THE FUNDAMENTAL CONSTITUTIONAL  
 RIGHT OF ACCESS TO THE COURTS REQUIRES REASON  
 ABLE MEANS TO ASSIST INMATES IN THE PREPARATION  
 AND FILING OF ALL NECESSARY LEGAL PAPERS IN PROVIDING

PERSONS WITH AN ADEQUATE LAW LIBRARY OR ADEQUATE ASSISTANCE FROM PERSONS TRAINED IN THE LAW. FIRST A LAW LIBRARY IS OF NO USE OR HELP TO AN ILLITERATE PERSON OR NON-ENGLISH SPEAKING FOREIGNER SECOND, THERE IS NO ASSISTANCE FROM PERSONS TRAINED IN THE LAW, WHICH IS CLEARLY PRESENT IN SCDC AND KERSHAW RECORDS THIRD, THERE IS ABSOLUTELY NO RECORDS AVAILABLE IN KERSHAW TO EVIDENCE THAT AN ILLITERATE PERSON OR FOREIGNER HAS EVER RECEIVED HELP BY PERSONS AUTHORIZED TO THE FACILITATION AND FILING OF MEANINGFUL LEGAL PAPER.

THE NEXT APPROACH IS WHETHER THE KERSHAW LAW LIBRARY CLERKS ARE CAPABLE OF PROVIDING ADEQUATE EFFICIENT, AND MEANINGFUL ASSISTANCE TO INMATES WHO DID NOT KNOW HOW TO UTILIZE RESEARCH RESOURCES. FIRST, ITS QUESTIONABLE WHETHER THE KERSHAW LAW LIBRARY CLERKS HAVE A DIPLOMA SECOND, IT IS A FACT THAT NO LAW LIBRARY CLERK HAS TAKEN A TYPE TEST OR WRITTEN TEST WITH VARIOUS LEGAL QUESTIONS TO DETERMINE AND IDENTIFY WHETHER THE INDIVIDUAL LAW CLERK HAS THE KNOWLEDGE AND ABILITY TO ASSIST OTHER INMATES IN LOCATING AND APPLYING RESEARCH INFORMATION THE QUESTION OF DUE PROCESS AND ACCESS TO THE COURTS IS KEPT FOR REVIEW IN

WHETHER A MANDATORY TEST PROCEDURE IS REQUIRED TO DETERMINE THE LEGAL CAPACITY OF LAW LIBRARY CLERKS AND WHETHER SUCH CAPACITY IS ADEQUATE, EFFECTIVE, AND MEANINGFUL TO INMATES WHO SEEK TO CHALLENGE THEIR CONVICTION AND SENTENCE OR THE CONDITIONS OF THEIR CONFINEMENT OTHERWISE, INEFFICIENT ASSISTANCE FROM INMATE LAW CLERKS IS LIKE THE BLIND LEADING THE BLIND ACROSS AN INTERSTATE.

THE NEXT APPROACH AND SOMETHING TO CONSIDER IS HOW CAN AN ILLITERATE OR NON-ENGLISH SPEAKING INMATE GET HELP IN RESEARCHING THE LAW APPLICABLE TO HIS CASE, AND HOW CAN HE GET ASSISTANCE IN PREPARING EFFECTIVE AND MEANINGFUL LEGAL PAPERS? FIRST, THERE IS NO PRISON AUTHORITIES IN KERSHAW WHO ARE TRAINED IN THE LAW OR EVEN WILLING TO HELP PRISONERS IN PREPARING EFFECTIVE AND MEANINGFUL LEGAL PAPERS SECOND, SCDC POLICY GA-0103 PROHIBITS INMATE LAW CLERKS FROM HELPING INMATES FILL OUT THEIR PCR AND HABEAS CORPUS APPLICATIONS THEREFORE, THERE IS NO ADEQUATE, EFFECTIVE, AND MEANINGFUL PROCEDURE AVAILABLE IN SCDC OR KERSHAW TO ASSIST ILLITERATE OR NON-ENGLISH SPEAKING INMATES IN PREPARING AND FILING MEANINGFUL LEGAL PAPERS WITH THE COURTS AN IDEA AND EFFECTIVE REMEDY IS A VIDEO SESSION THAT EXPLAINS PCR, HABEAS CORPUS, AND

CIVIL RIGHTS MATTER TO THE ILLITERATE AND NON-ENGLISH SPEAKING INMATE.

THE FINAL APPROACH IS WHETHER THE KERSHAW LAW LIBRARY IS ADEQUATE, EFFECTIVE, AND MEANINGFUL, FIRST AND FOREMOST, SCDC POLICY GA-0103 REQUIRES VOLUMES 1-244 OF THE FEDERAL SUPPLEMENT SECOND SERIES TO BE ON THE SHELF OF KERSHAW LAW LIBRARY HOWEVER, APPROXIMATELY 160 VOLUMES ARE MISSING. AS FOR CHALLENGING A CONVICTION AND SENTENCE IN A HABEAS CORPUS ACTION OR CHALLENGING THE CONDITIONS OF CONFINEMENT IN A 1983 OR TORT ACTION IN FEDERAL COURT REQUIRES CURRENT SUPPLEMENTS TO THE UNITED STATES CODE ANNOTATED AND FEDERAL DIGESTS IN THE KERSHAW LAW LIBRARY HOWEVER, THESE CURRENT SUPPLEMENTS ARE NOT AVAILABLE, AND THE LEXIS NEXIS DOES NOT SUFFICE BECAUSE ITS DATA IS LIMITED TO U.S SUPREME COURT DECISIONS AND FOURTH CIRCUIT DECISIONS THE REASON WHY IT DOES NOT SUFFICE IS BECAUSE ATTORNEY DRAFTS IN OPPOSITION AND COURT DRAFTS ALWAYS HAVE FEDERAL CASE LAW THAT IS CITED FROM OTHER CIRCUITS, WHICH THE KERSHAW LAW LIBRARY DOES NOT HAVE LASTLY, THE KERSHAW LAW LIBRARY DOES NOT HAVE A CURRENT POLICY INDEX AND IT IS MISSING VARIOUS POLICIES THEREFORE, THE KERSHAW LAW LIBRARY IS ACTUALLY INADEQUATE.

FOR ALL OF THE REASONS GIVEN, PURSUANT TO FEDERAL LAW I AM INNOCENT AND WITHOUT FAULT OR BLAME FOR HELPING INMATE THREFT, WHO IS ILLITERATE, FILL 3117 HCS FOR APPLICATION. PURSUANT TO JULIANSON V. AVERY, 89 S CT 747, UNTIL THE STATE OF SOUTH CAROLINA PROVIDES SOME REASONABLE ALTERNATIVE TO ASSIST INMATES IN THE PREPARATION OF PETITIONS FOR POST-CONVICTION RELIEF, IT MAY NOT 'VALDLY ENFORCE' A REGULATION BARRING INMATES FROM FURNISHING SUCH ASSISTANCE TO OTHER PRISONERS

CONCLUSION OF FACTS, THE ACTUAL REASON WHY THIS MATTER IS BEFORE THE REVIEWING AUTHORITY IS BECAUSE THE REPORTING OFFICIAL IS VEHEMENTLY SEEKING MEANS OF RETALIATION AGAINST THE AFFEANT FOR FILING A COMPLAINT THE REPORTING OFFICIAL IS FULLY AWARE OF CLEARLY ESTABLISHED LAW SEE THE FOLLOWING CORRESPONDENCES,

1. MAY 21 2008 LETTER TO JOHN OZMENT, DIRECTOR OF SCDC,
2. JUNE 16, 2008 LETTER TO MS CECELEA RLYNOLDS, K L I WARDEN,
3. JUNE 9, 2008 LETTER TO P COOKS, LAW LIBRARIAN / SECURITY,

4. JUNE 17, 2008 GRIEVANCES KCRZ 0137-08 AND 0744-08,

5 JUNE 9-10, 2008 LETTERS FROM MICHAEL R MATTHEWS, BRANCH CHIEF OF CLASSIFICATION,

6. JUNE 24, 2008 MEMORANDUM (SUSPENSION OF LAW LIBRARY SERVICES)

7 JUNE 25, 2008 LETTER TO KERSHAW INVESTIGATOR,

8. JUNE 25, 2008 LETTER TO LEELEZA REYNOLDS, KCRZ WARDEN, AND

9 JUNE 26, 2008 LETTER TO VERNON TUCKER

THIS IS A COMPLETE AFFIDAVIT CONSISTING OF SEVEN (7) PAGES

DATED JUNE 30, 2008  
KERSHAW, SOUTH CAROLINA

Stacy W. Howard  
STACY W. HOWARD - AFFICANT  
KERSHAW CORRECTIONAL INST  
4848 E. OLDMEANE HIGHWAY  
KERSHAW, SC 29067

SWORN TO AND SUBSCRIBED BEFORE ME  
THIS 30 DAY OF June, 2008

Edward M. Kene  
NOTARY PUBLIC FOR SOUTH CAROLINA  
MY COMMISSION EXPIRES: 1/31/18

**RECEIVED**

JUN 30 2008

KerCI  
MAILROOM

DEC 30 2008

REQUEST TO STAFF MEMBER

TO MR PITTMAN, CLASSIFICATION

DATE 12-29-08

INMATE NAME STACY W HOWARD

SCDC# 191458

INSTITUTION KERSHAW

OAK B-40

Mr Pittmann,

Please recall my visit to your office on December 29, 2008, which is indicated in your log book. As you are aware, my projected maxout at Kirkland R&E was 5-11-2019 and my projected parole date was 2-20-2012. After my arrival at Lieber, and after EWC and EEC deductions, my projected maxout was 1-14-07 and my projected parole date was 11-7-2010.

I arrived at Kershaw on 12-4-07. I received a job assignment as a law clerk on 12-17-07, however, Mr Vernon A Tucker failed to turn in a 19-54 form on me and this was not noticed until 5-16-08. At that time, I had already lost EWC and EEC, because neither was entered in the CRT.

Since the aforementioned, Kershaw officials lodged a level 5 offense against me for helping an illiterate inmate fill out a prescribed application for filing with the Court. As a result, I lost twenty (20) days for the month of the infraction and my 2 for 5 EWC level, where the offense is being treated as a major disciplinary.

You informed me that my current parole date is February of 2011 and that my current maxout is November 2, 2017. Upon review, you will find that I have lost eleven (11) months since my arrival at Kershaw. Please provide me with the following information, which is required for filing a grievance regarding the structure of my sentence.

1. What is the date of my arrival in the Kirkland R&E on the current aggregated sentences? \_\_\_\_\_.

2. What was the projected maxout date and parole date upon my arrival in the Kirkland R&E? Maxout date \_\_\_\_\_, Parole date \_\_\_\_\_.

3 What is my sentence start date on the current aggregated sentences?

\_\_\_\_\_

4 What is the date of the temporary release from Kirkland R&E to Williamsburg County? \_\_\_\_\_

5 What is the date of my return from Williamsburg to Kirkland R&E?

\_\_\_\_\_

6 What is the date of my transfer from Kirkland R&E to Lieber?

\_\_\_\_\_

7 What is the date of the ICC arrival hearing at Lieber?

\_\_\_\_\_

8 What is the date of the CRT entry of my job assignment at Lieber?

\_\_\_\_\_

9 What is the date of the CRT entry of my school assignment at Lieber?

\_\_\_\_\_

10 What was my maxout date and parole date after the CRT entries at Lieber? \_\_\_\_\_

11 What is the date of the temporary Court release from Lieber to Williamsburg County? \_\_\_\_\_

12 What is the date of my return from Williamsburg to Lieber?

\_\_\_\_\_

13 What is the date of the temporary release from Lieber to Darlington County? \_\_\_\_\_

14 What is the date of my return from Darlington to Lieber?

\_\_\_\_\_

15 What is the date of the classification review at Lieber? \_\_\_\_\_.

16 What is the date of my transfer from Lieber to Kershaw? \_\_\_\_\_.

17 What is the date of the ICC arrival hearing at Kershaw? \_\_\_\_\_.

18 What is the date of the CRT of my school assignment at Kershaw?

\_\_\_\_\_

19 What is the date of the CRT entry of my job assignment at Kershaw?

\_\_\_\_\_

20 What is the date of the "first" temporary court release from Kershaw to Darlington County? \_\_\_\_\_

21 What is the date of my return from Darlington to Kershaw?

\_\_\_\_\_

22 What is the date of my "second" temporary court release from Kershaw to Darlington County? \_\_\_\_\_

23 What is the date of my return from Darlington to Kershaw?

\_\_\_\_\_

24 What is the date of the temporary court release from Kershaw to Georgetown County? \_\_\_\_\_

25 What is the date of my return from Georgetown to Kershaw?

\_\_\_\_\_

26 What is the date that twenty (20) days goodtime was taken for the level 5 offense? \_\_\_\_\_.

27 What is the date when my EWC level of 2 for 5 was reduced to a 3 for 5? \_\_\_\_\_

28 What is the date of the CRT entry of my job assignment after my release from the SMU on 12-16-08?

29 Is my EWC back dated for the time I spent in SMU from 12-1-08 to 12-16-08? Yes( ) No( ) If yes, how many days? \_\_\_\_\_

30 What was the date of my last annual review at Kershaw? \_\_\_\_\_

31 What is my current EWC level? \_\_\_\_\_

32 As of the date of your response, how much EEC have I earned?  
\_\_\_\_\_

33 As of the date of your response, how much EWC have I earned?  
\_\_\_\_\_

34 Has there been any deletions made in the offender management screen?  
Yes( ) No( )

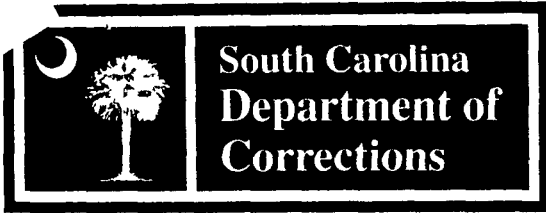
35 Has there been any updates in the offender management screen?  
Yes( ) No( )

36 Has there been any changes in the offender management screen, other than what is specified in this request? Yes( ) No( )

37 Has there been any other CRT entries, other than what is specified in this request? Yes( ) No( )

38 Please indicate the names of each person who has made any CRT entries, modifications, or deletions regarding my sentence

|  |  |
|--|--|
|  |  |
|  |  |
|  |  |
|  |  |



MARK SANFORD Governor  
JON OZMINT Director

April 6, 2009

The Honorable John D McLeod  
South Carolina Administrative Law Court  
Edgar A Brown Building, Suite 224  
1205 Pendleton Street  
Columbia, SC 29201

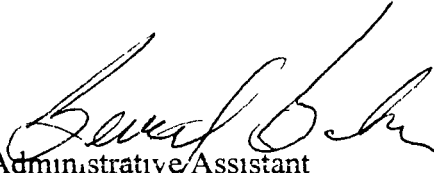
RE Stacy Howard, #191458 v SCDC  
Docket No 09-ALJ-04-00122-AP

Dear Judge

Please find enclosed an original and one copy of *Respondent's Record* that consists of *Inmate Grievance #KRCI 0892-08*, in the above-referenced matter

Also enclosed is an original and one copy of *Respondent's Brief and Motion to Dismiss* in the above-captioned case Please file the original in your office and return a clocked-in copy to me for my file in the enclosed self-addressed envelope

Sincerely,

  
Administrative Assistant  
Office of General Counsel

Enclosures

cc Stacy Howard, #191458

**STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT**

|   |   |                               |
|---|---|-------------------------------|
| Stacy Howard, #191458,                    | ) | Docket No 09-ALJ-04-00122-AP  |
| Appellant,                                | ) |                               |
|   | ) |                               |
| v   | ) | RESPONDENT'S BRIEF AND MOTION |
|   | ) | TO DISMISS                    |
| South Carolina Department of Corrections, | ) | Honorable John D McLeod       |
|   | ) |                               |
| Respondent                                | ) |                               |
| _____                                     | ) |                               |
|   | ) |                               |

STATEMENT OF FACTS

This matter is before the Administrative Law Court (“ALC”) pursuant to the appeal of Stacy Howard (“Appellant”), an inmate incarcerated with the South Carolina Department of Corrections (“SCDC”) Appellant filed a Step One Grievance on 21 July 2008, complaining about his conviction for Unauthorized Services/Piddling, 845 under SCDC Policy OP-22 14, Inmate Disciplinary System This grievance was investigated and denied Appellant filed a Step Two Grievance on 1 October 2008 This grievance also was investigated and denied Appellant received the final agency decision on 14 November 2008 In his Notice of Appeal, Appellant asks that the conviction be vacated

Loss of good-time is not an issue in the present case However, Appellant failed to earn good time for the month of the disciplinary infraction Pursuant to S C Code Ann §24-13-210, inmates convicted of crimes against the state may earn good-time credits These credits entitle inmates to a sentence deduction for each month of incarceration if they have observed all rules of the institution where they are confined and have not been subjected to punishment for misbehavior Inmates convicted of offenses other than “no-parole” offenses are eligible to earn 20 days of good time each month, and

inmates convicted of no-parole offenses are eligible to earn three days of good time for each month<sup>1</sup> Therefore, SCDC, through SCDC Policy OP-21 11, Loss of Statutory Good Time provides for an inmate's failure to earn good time for a given month upon the inmate's violation of a rule<sup>2</sup> In addition, pursuant to SCDC Policy OP-22 14, Inmate Disciplinary System, an inmate's violation of certain rules can result in the deduction of good-time credits the inmate has earned in past months

ARGUMENT

THE ADMINISTRATIVE LAW COURT SHOULD DISMISS THIS CASE UNDER SLEZAK V SCDC, 361 S C 327, 605 S E 2D 506 (2004), SKIPPER V SOUTH CAROLINA DEPARTMENT OF CORRECTIONS, 370 S C 267, 633 S E 2D 910 (S C COURT OF APPEALS 2006), AND IN LIGHT OF THE LEGISLATURE'S RECENT AMENDMENT TO THE SOUTH CAROLINA ADMINISTRATIVE PROCEDURES ACT

The ALC s jurisdiction to hear this matter is derived from the decision of the South Carolina Supreme Court in Al-Shabazz v State, 338 S C 354, 527 S E 2d 742 (2000) Subsequently, the Supreme Court clarified the ALC's appellate jurisdiction over inmate appeals in Slezak v SCDC, 355 S C 437, 586 S E 2d 124 (2004) The Supreme Court held that, although the ALC had jurisdiction over all properly perfected inmate appeals, the ALC may summarily decide those appeals that do not implicate an inmate s state-created liberty or property interest SCDC reads Slezak as encouraging, for the sake of judicial economy, the ALC to dismiss summarily inmate cases that do not involve a state created liberty or property interest

<sup>1</sup> [N]o prisoner serving a sentence for life imprisonment or a mandatory minimum term of imprisonment for thirty years pursuant to S.C. Code Ann. §16-3-20 is entitled to credits under this provision. No prisoner convicted of a no parole offense is entitled to a reduction below the minimum term of incarceration provided in § 24-13- 125 or 24-13 150 When two or more consecutive sentences are to be served the aggregate of the several sentences is the basis upon which the good conduct credit is computed S C Code Ann 24-13-210(B)

<sup>2</sup> A rule violation may be determined through informal resolution or following a disciplinary hearing If the inmate does not accept informal resolution the incident may be referred to a disciplinary hearing where the inmate may plead guilty to the infraction or be found guilty of the infraction following the hearing

Recently the South Carolina Court of Appeals has interpreted Slezak to mean that where a state-created liberty interest is not implicated in a prisoner appeal, the ALJ should' dismiss the appeal Skipper v SCDC, 370 S C 267, 633 S E 2d 910 (S C Court of Appeals 2006) In 2007, the South Carolina Supreme Court expanded the scope of the state-created liberty interest in Furtick v SCDC, 374 S C 334 In Furtick, the court held that following a disciplinary conviction, an inmate's failure to earn good time for a given month, even in the absence of the loss of previously earned good-time credits, implicated the state-created liberty interest 374 S C at 340 As a result, during the past year, inmates who are eligible to earn good time have appealed to the ALC disciplinary convictions that caused them to fail to earn good time credits for a given month, even though no previously earned good time was lost

However, due to a recent amendment to the South Carolina Administrative Procedures Act, SCDC submits that the ALC no longer should hear appeals pursuant to Furtick The amendment provides that

[A]n administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A) S C Code 1-23-600(D) (H4328, Rat # 0413)

South Carolina Governor Mark Sanford signed the amendment on June 16, 2008

SCDC submits that pursuant to the amendment, this court cannot hear inmate appeals in which inmates have not lost good time, but have failed to earn good time for the month of their disciplinary infraction South Carolina recognizes several rules of statutory construction, the most fundamental rule being that legislative intent prevails 'The cardinal rule of statutory construction is to ascertain and effectuate the intent of the Legislature' Hodges v Rainey, 341 S C 79, 85, 533 S E 2d 578, 581 (2000) "All

rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purpose of the statute ' Broadhurst v City of Myrtle Beach Election Comm'n, 342 S C 373, 380, 537 S E 2d 543, 546 (2000)

A reading of the language of the amendment, the language of the original bill presented to the legislature, and the timing of the bill indicate legislative intent for the ALC to no longer hear these appeals. The bill was presented to the legislature in the 2007-2008 session, within months of the Supreme Court's decision in Furtick. The bill originally proposed an amendment of the state Administrative Procedures Act, 'so as to conform the procedures to other procedural provisions regarding the court *and to prohibit the hearing of certain inmate appeals by the court* ' H 3575, Rat #0413 (Emphasis added). Clearly, the legislature intended to remove a category of inmate appeals from cases to be heard by the ALC. Because the amended statute specifies appeals involving the loss of the opportunity to earn good-time credits, SCDC concludes that the legislature intended to exclude from the ALC's jurisdiction cases that would have been heard in light of Furtick.

A literal reading of the amendment could remove all inmate disciplinary appeals from the ALC's jurisdiction because all major disciplinary appeals are appeals "involving" the failure to earn good-time credits, even if the cases also involve the loss of previously earned good-time credits. However, SCDC submits that this reading would preclude the ALC from hearing inmate appeals involving any disciplinary conviction in which an inmate lost previously earned good-time credits. SCDC submits this result is likely too absurd to have been intended by the legislature. It follows that such a literal reading would not be permissible under the rules of construction as the South Carolina

Supreme court defined them in Unisun Insurance Co v Schmidt, 529 S C 362 (2000)

We will reject a statutory interpretation when to accept it would lead to a result so plainly absurd that it could not have been intended by the legislature or would defeat the plain legislative intention ' Unisun at 368

In addition, SCDC's reading of the statute comports with the legislative intent behind South Carolina s statutes on good-time credits, S C Code Ann 24-13-210 and 230 Chief Justice Jean Toal, in her dissenting opinion in Furtick, stated that the majority's decision ignored the legislature's intent to reward inmates with good-time credits only after they exhibit good behavior Acknowledging that this is a dissenting opinion, SCDC nevertheless agrees with Justice Toal's interpretation of legislative intent as to the scope of the state-created liberty interest Furthermore, Justice Toal referred to the court's "long-standing 'hands-off' approach to judicial supervision of internal prison disciplinary matters which do not amount to a violation of constitutional dimensions" Id., at 341 SCDC's reading of the amended APA is consistent with this long-standing approach to internal prison disciplinary matters

In the instant case, Appellant says his conviction for Unauthorized Services/Piddling should be vacated However, Appellant lost no good time due to this conviction but only failed to earn good time for the month of the infraction Therefore, the ALC should dismiss this appeal

CONCLUSION

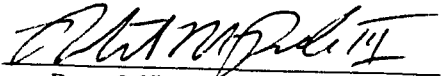
Based on the foregoing reasons and legal authorities, SCDC respectfully requests that this matter be dismissed pursuant to the newly amended South Carolina Administrative Procedures Act, S C Code Ann §1-23-600(D), Rule 12(b)(1), and Slezak v South Carolina Department of Corrections, 361 S C 327, 605 S E 2d 506 (2004)

Respectfully submitted,

DAVID M TATARSKY  
General Counsel

ROBERT M PEELE, III  
Staff Attorney

SOUTH CAROLINA DEPARTMENT  
OF CORRECTIONS

BY   
Post Office Box 21787  
4444 Broad River Road  
Columbia, South Carolina 29221  
(803) 896-8508

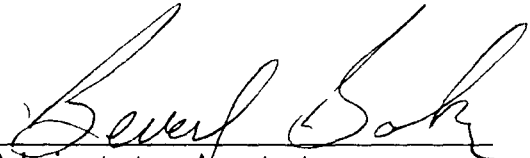
6 April 2009  
Columbia, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was this date served upon the following individual(s) by placing a copy of the same to his/her last known address as follows

Stacy Howard, #191458  
Kershaw Correctional Institution  
4848 Goldmine Highway  
Kershaw, SC 29067

Columbia, South Carolina  
April 6, 2009

  
Administrative Assistant  
South Carolina Department of Corrections  
4444 Broad River Road  
P O Box 21787  
Columbia, SC 29221-1787  
(803) 896-8508

The Honorable John D McLeod  
South Carolina Administrative Law Court  
Edgar A Browr Bldg , Suite 224  
1205 Pendleton Street  
Columbia, S C 29201

April 10, 2009

RE Stacy W Howard v SCDC  
09-ALJ-04-00122-AP

Dear Judge,

Enclosed please find Appellant's Brief in Opposition to Respondent's Brief and Motion to Dismiss for filing with the Court I received the Respondent's Brief and Motion to Dismiss on April 9, 2009

Thank you for your time and patience

Sincerely,

  
Stacy W Howard

Kershaw Corr Inst  
4848 Goldmine Highway  
Kershaw, S C 29067

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Stacy W. Howard, )  
Appellant, )

Docket No: 09-ALJ-04-00122-AP

vs. )

APPELLANT'S BRIEF IN OPPOSITION TO  
RESPONDENT'S BRIEF AND MOTION TO  
DISMISS

S.C. Dept. of Corrections, )  
Respondent. )

---

In opposition to Respondent's Brief and Motion to Dismiss, the Appellant will show the following.

**Inadequate Law Library**

The Kershaw Correctional Institute's law library does not have sufficient legal resources. The Appellant cannot read and respond to the Slezak, Skipper, and Furtick cases that are cited in Respondent's Brief because those cases are not available in the K.C.I. law library. Moreover, the Appellant cannot read section 1-23-600 (D) (2008), because there is no 2008 law in the K.C.I. law library. The K.C.I. law library holdings are 2007 statutes and S.C. Digest pocket parts. The South Eastern Reporter ends at volume 576. Because of the inadequacy of the K.C.I. law library, the Appellant is prejudiced in this appeal, and this denies Appellant due process and equal protection of the law.

The fundamental constitutional right of access to the courts requires prison authorities to assist inmates in the preparation and filing of meaningful legal papers by providing prisoners with "adequate law libraries or

adequate assistance from persons trained in the law." At this juncture the K.C.I. has neither an adequate law library or a legal assistance program in the alternative. The U.S. Supreme Court has defined access to the courts as encompassing all the means a petitioner might require to get a fair hearing from the judiciary on all charges brought against him or grievances alleged by him See *Bounds v. Smith*, 430 U.S. 817, 52 L.Ed.2d 72, 97 S.Ct. 1491 (1977) and *Lewis v. Casey*, 116 S.Ct. 2174 (1996).

SCDC policy GA-01.03 (Access to the Courts) requires current holdings of the Code of Laws of South Carolina and the South Carolina Practice Digests, however, the K.C.I. law library is devoid of this law and case law after volume 576 of the South Eastern Reporter. The reason why the K.C.I. law library is inadequate is because it is governed by a 2004 policy in the year 2009. For this reason, the Appellant is hindered from adequate, effective, and meaningful access to this court, which prejudices him in this appeal.

#### Argument

1. The Appellant has a liberty interest in this appeal.

Appellant has appealed his conviction and sentence for Unauthorized Services/Piddling. The Disciplinary Hearing Officer (DHO) imposed a reprimand as a sanction for Appellant helping an illiterate inmate fill out his PCR application, which was done in plain view of staff in the K.C.I. law library. The reason why Appellant openly helped an illiterate inmate is because he acted in reliance of *Johnson v. Avery*, 393 U.S. 483, 89 S.Ct. 747 (1969) and other decisions that are cited in Appellant's grievance. Because of these decisions, and because the K.C.I. law library is not adequate (note. the K.C.I. is also devoid of approximately 174 volumes of the F.Supp.2d and numerous

other federal volumes that are required to be held by the outdated policy), the Appellant is not in violation for helping an illiterate inmate

The Appellant has only been convicted for this offense since his immurement in the South Carolina Department of Corrections. This conviction, although it is a reprimand, has affected Appellant's sentence, and it has extended his projected maxout and parole dates. First, the level 5 minor offense and conviction is being treated as a "major" disciplinary, and it has changed Appellant's earned work credits (EWC) level from a 2 for 5 to a 3 for 5. This reduced Appellant's EWC from a monthly credit of 10 7142 days to 7 1428 days, which is a difference of 3 1428 days a month. Secondly, the Appellant's sentence maxout and parole dates are further extended by the twenty (20) days loss of goodtime for the month of the infraction. Thirdly, the one (1) and only level 5 offense has affected Appellant's maxout drastically where it has extended his sentence by ten (10) months. Therefore, a liberty and due process interest is at stake.

Upon Appellant's arrival in the Kirkland reception and Evaluation Center, his projected maxout was May 11, 2019, and his projected parole date was February 20, 2012, without EWC. After being transferred to the Lieber Correctional Institute, and after EWC calculations, Appellant's projected maxout was January 14, 2017 and his projected parole date was November 7, 2010. Finally, after Appellant's arrival at the Kershaw Correctional Institute he received the level 5 conviction, which extended his maxout for approximately ten (10) months. This created a new projected maxout date of November 2, 2017 and a parole date of February 2011. As a result, Appellant is prejudiced by the conviction and the erroneous extension of his sentence in which a state created liberty interest does exist.

2. The administrative findings and conclusions are in violation of constitutional provisions and are arbitrary, capricious, and characterized by an abuse of discretion and/or clearly unwarranted exercise of discretion.

The Appellant has been convicted by a policy rule that cannot be rightfully enforced and severely punished for observing case law by helping an illiterate inmate fill out his PCR application when there was absolutely no other alternative available. As previously mentioned, the K.C.I. law library is not adequate, and there is no legal assistance program available. Therefore, Appellant was within the law by helping an illiterate inmate fill out his PCR application in a "proper" location so that he could meaningfully access the courts (see exhibits 12, 13 & 16).

The Appellant was not given a meaningful opportunity to present a defense or to be heard, and he was denied a right to receive a fair hearing before an impartial hearing officer. As the record reflects, even though there is no transcript available, the DHO's findings and conclusions are in violation of constitutional provisions and are arbitrary, capricious, and characterized by an abuse of discretion and/or clearly unwarranted exercise of discretion where 1) Appellant was not allowed an opportunity to present documentary evidence to show that the K.C.I. law library is inadequate and that there is no legal assistance program (see exhibit 16), 2) The DHO did not allow Appellant an opportunity to question his accuser, nor did the DHO indicate the denial on the SCDC form 19-69 (see exhibit 18 & SCDC policy 22.14 § 8 2.6, 18 1 3), and 3) The DHO did not allow Appellant to present witnesses in his defense, nor did the DHO indicate the denial of witnesses on the SCDC form 19-69 (see SCDC policy OP-22 14 § 15 3 & exhibit 16). As a result, Appellant has been prejudiced by the deprivation of minimal due process.

Finally, the SCDC officials are disparately treating Appellant different than other prisoners who receive disciplinary convictions. As previously mentioned, Appellant's prison sentence has been extended for ten (10) months as a result of the disciplinary conviction. Moreover, the level 5 minor offense is being treated as a major offense and Appellant's EWC has been reduced to a 3 for 5 for a first time offense. This type of treatment is cruel and unusual and it is in violation of equal protection of the law. SCDC records will reflect that inmates are not punished the same as Appellant has been punished, and in the interest of justice and fairness, the disciplinary conviction should be vacated to rectify the infringements hereinbefore shown.

3 Section 1-23-600 (D) is being construed to such an extent that an iron curtain is drawn between Appellant and the Court.

Due process contemplates that a person be afforded a meaningful and fair opportunity to litigate its cause. However, the way the said statute is being observed, no matter how erroneous a disciplinary decision or conviction might be, an inmate cannot have the error or wrong corrected through an appeal when there is only a loss of goodtime for the month of the infraction. This will give disciplinary hearing officers license to impose wrongful convictions and sanctions where the statute shields such decisions and sanctions from review by an appellate court.

The legislature could not have possibly intended the operation of this to act as a bar to Appellant and prisoners who appeal decisions in which they have only lost goodtime for the month of the infraction. If this is the true meaning of the statute, then it serves as an iron curtain between any form of correction for any error which affects an inmate's sentence of this nature.

If anything, Appellant's appeal arguments should be screened to determine if the appeal has merit before it is dismissed This will prevent injustice from occurring

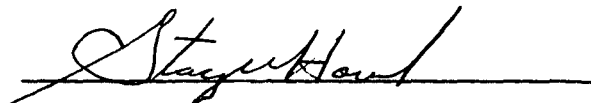
#### Conclusion

Appellant respectfully submits that the legislature's intent should be sought regarding section 1-23-600 (D) (2008) Committee reports, bill as introduced, changes, and statements made by chairman may be resorted to under proper qualifications to ascertain meaning of statute See U S v Limehouse, 58 F 2d 395 rev 52 S Ct 412 (1931) Furthermore, Appellant respectfully requests for this Court to screen his appeal, and if it finds this appeal has merit, require the SCDC to produce the transcript so that this appeal and briefs can proceed

Dated April 10, 2009

Kershaw, South Carolina

Respectfully Submitted,



Stacy W Howard, Appellant

Kershaw Corr Inst

4848 Goldmine Highway

Kershaw, S C 29067

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Stacy W Howard,  
Appellant,

Docket No 09-ALJ-04-00122-AP

VS

AFFIDAVIT OF SERVICE

S C Dept of Corrections,  
Respondent

I, Stacy W Howard, have filed and served Appellant's Brief in Opposition to Respondent's Brief and Motion to Dismiss, by placing a copy of same in the SCDC mail for U S Postal Mail properly addressed to  
Clerk's Office  
S C Admin Law Court  
1205 Pendleton Street, Ste 224  
Columbia, S C 29201  
Robert M Peele, III  
Office of General Counsel  
4444 Broad River Road  
Columbia, S C 29221

Stacy W Howard

Sworn to and subscribed before me  
this 10 day of April, 2009  
Florence M Kline  
Notary Public for South Carolina  
My commission expires 1/31/18

Stacy W Howard, Appellant  
Kershaw Corr Inst  
4848 Coldmine Highway  
Kershaw, S C 29067

STATE OF SOUTH CAROLINA  
ADMINISTRATIVE LAW COURT

Stacy Howard, #191458 )  
 )  
 Appellant, )  
 )  
 vs )  
 )  
 South Carolina Department of Corrections, )  
 )  
 Respondent )  
 )  
 )  
 )  
 )  
 )

Docket No 09-ALJ-04-00122-IJ

ORDER OF DISMISSAL  
**FILED**  
MAY 21 2009

SC ADMIN LAW COURT

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to the Notice of Appeal filed by Appellant (Inmate) above named, who is incarcerated with the South Carolina Department of Corrections (SCDC)

Inmate appeals his conviction of Unauthorized Services/ Piddling (handicrafts) (845) SCDC Policy OP-22 14, Inmate Disciplinary System

He (a) was not sanctioned with the loss of any good time credits, (b) made no claim for the loss of any other state created liberty or property interest, and, (c) made no contention that his sentence, sentence related credits or custody status has been erroneously calculated He did fail to earn good time for the month in which he was convicted

His failure to earn good time credits because of the conviction, if any, is not a basis upon which jurisdiction in this Court can be founded See S C Code Ann § 1-23-560 (D) amended by Act 334 (2008)<sup>1</sup> (prohibiting the Administrative Law Court from hearing appeals by inmates of the S C Department of Corrections where the loss of the opportunity to earn sentence related credits is the "liberty interest" upon which jurisdiction in this Court is asserted ) This statute applies not only to the loss of the right to earn good time for the month but to the loss of the right to earn other credits such as

<sup>1</sup> An administrative law judge shall not hear an appeal from an inmate in the custody of the Department of Corrections involving the loss of the opportunity to earn sentence related credits pursuant to Section 24 13 210(A) or Section 24 13 230(A)

earned work credits

The loss of earned work credits is governed, tangentially, by Skipper v S C Department of Corrections, 370 S C 267, 633 S E 2d 910 (Ct App 2006) in which the Court held that an inmate had no state created liberty interest in a work release program

More recently, the United States Supreme Court took the opportunity to clarify the law with respect to state-created liberty interests in prison systems that are protected by the Due Process Clause Sandin v Conner, 515 U S 472, 115 S Ct 2293, 132 L Ed 2d 418 (1995) The Court noted that "these interests will be generally limited to freedom from restraint which, while not exceeding the sentence in such an unexpected manner as to give rise to protection by the Due Process Clause of its own force, nonetheless imposes atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life " Id at 484, 115 S Ct 2293 (citations omitted) In ruling on Conner's case, the Court established directives for future cases Specifically, the Court held that "Conner's discipline in segregated confinement did not present the type of atypical, significant deprivation in which a State might conceivably create a liberty interest " Id at 486, 115 S Ct 2293

Applying the above-outlined principles, we find Skipper's participation in the Prison Industries program is not a right, but a privilege Not all prisons provide this opportunity to inmates, and those that do provide this option are inundated with inmate requests and forced to maintain long waiting lists This employment program does not meet the test for a state-created liberty interest as outlined in Sandin because it does not present an atypical, significant hardship on inmates who are not permitted to participate Consequently, Skipper, in being terminated from his prison employment, did not suffer an infringement upon his liberty interests

Skipper, 633 S E 2d at 914-15


Applying the same rationale here, there is clearly no liberty interest in an institutional job assignment which is clearly of lesser dignity than employment in a work release program authorized by state statute and its denial is clearly not an atypical and significant hardship on the inmate in relation to the ordinary incidents of prison life Since there is no right to the job assignment, there is no liberty interest in credits that may be earned in the job

Under Slezak v S C Department of Corrections, 361 S C 327, 605 S E 2d 506 (2004), the Administrative Law Court is to have jurisdiction of all properly perfected inmate appeals but "Summary dismissal may be appropriate where the inmate's

grievance does not implicate a state created liberty or property interest " Such is the case here

Therefore, for the foregoing reasons this appeal is hereby **DISMISSED, WITH PREJUDICE**

May 21, 2009  
Columbia, SC

  
\_\_\_\_\_  
John D. McLeod, Judge  
SC Administrative Law Court

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this date served this order in the above entitled action upon all parties to this cause by depositing a copy hereof in the United States mail postage paid or in the Interagency Mail Service addressed to the party(ies) or their attorney(s)

This 21 day of May, 2009

By Anthony R. Galdman  
Judicial Law Clerk

CERTIFICATE OF APPELLANT

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material. The undersigned also certifies that said record is in compliance with the August 13, 2007 South Carolina Supreme Court Order.

January 22, 2010

Kershaw, South Carolina

A handwritten signature in cursive script, appearing to read "Stacy W. Howard", is written over a solid horizontal line.

Stacy W. Howard, Appellant

Kershaw Corr. Inst.

4848 Goldmine Highway

Kershaw, SC 29067

RECEIVED  
JAN 28 2010  
SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
IN THE COURT OF APPEALS  
APPEAL FROM ADMIN LAW COURT

CASE NO 09-ALJ-04-00122-IJ

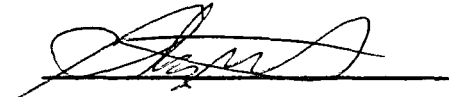
Stacy W Howard ... ..Appellant,  
vs  
South Carolina Dept. of Corrections . . . . .Respondent.

AFFIDAVIT OF SERVICE

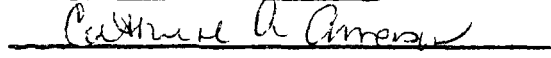
I, Stacy W. Howard, have served Respondent with Appellant's Brief in Reply to the Brief of Respondent and Record on Appeal on January 22, 2010, by placing a copy of same in the United States Postal Mail, with postage, properly addressed to.

Christopher D. Florian  
S.C Dept of Corr.  
Post Office Box 21787  
Columbia, SC 29221

January 22, 2010  
Kershaw, South Carolina

  
Stacy W Howard, Appellant  
Kershaw Corr. Inst.  
4848 Goldmine Highway  
Kershaw, SC 29067

Sworn to and subscribed before me  
this 22 day of Jan, 2010

  
Notary Public for South Carolina  
My commission expires. \_\_\_\_\_

My Commission Expires December 22, 2018